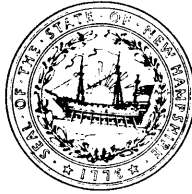


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State House Annex
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RE: Unclassified Employees Becoming Classified

Dear Ms. Vogel:

You have requested our opinion on the application of certain statutes and personnel rules to those individuals who were employed as unclassified or non-classified employees for the state and who have now become classified employees. Specifically you have asked:

1. Whether the time worked by an unclassified employee should be counted toward longevity when that employee is immediately hired into a classified position?
2. Whether the time worked as an unclassified employee may be applied to the formula used for calculating annual and sick leave?
3. Whether time worked as an unclassified employee counts toward any probationary period which is required by the classified position into which that employee is hired?

For the reasons that follow, question one is answered in the affirmative and questions two and three are answered in the negative.

RSA 99:5 allows classified employees to receive longevity pay for continuous years of service for the state. It provides in pertinent part:



Any regular classified employee of the state who has completed 10 years of continuous service for the state shall be paid, in addition to the salary to which he is entitled by the classification plan, the sum of \$200 annually and an additional \$200 for each additional five years of continuous state service.

A similar provision for unclassified employees is found at RSA 94:4. It provides:

Any state official who has completed ten years of service for the state shall be paid, in addition to his statutory salary, the sum of \$200 annually and an additional \$200 for each additional five years of state service.

Both of these provisions were originally enacted in 1947; see Chapter 243, Laws of 1947, and both sections were amended in 1979; see Chapter 434, Laws of 1979. Since both of these statutes deal with the same subject matter and since they were passed and later amended in the same legislative sessions, they should be construed together. See Sutherland Stat Const. §51.03 (4th Ed.).

In construing these statutes together, it is apparent that the legislature intended to reward both classified and unclassified employees of the state who had worked for the state for a long period of time. Consequently, it is our view that these two statutes should be liberally interpreted so that the intent of the legislature is followed.

RSA 99:5 requires that ten years of continuous service be completed before a classified employee is eligible for longevity pay. It does not require that the service be as a classified employee. Since RSA 99:5 does not require ten years of continuous service as a classified employee and in light of the clear intent of the legislature set forth in both RSA 94:4 and RSA 99:5, it is our view that time worked as an unclassified employee should be counted toward longevity when that employee is immediately hired into a classified position.

You have also inquired whether time worked as an unclassified employee may be applied to the formulas used for calculating annual and sick leave as provided in the rules of the Division of Personnel and the collective bargaining agreement. Both the rules and the collective bargaining agreement, in reference to annual and sick leave, apply only to those employees in the state classified service. The formula for computing annual and sick leave is based upon years

completed in the state classified service. See Per 307.03 and 307.04. Consequently, because the formula for computing annual and sick leave is based upon years worked in the state classified service, time worked as an unclassified employee has no bearing on the determination of annual or sick leave.^{1/}

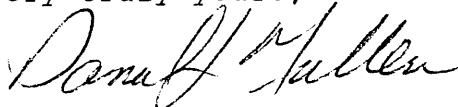
Finally, you have inquired whether time worked in an unclassified position counts toward the probationary period required by Per. 302.03 which provides in pertinent part:

All appointments to any vacancy shall be tentative and, . . . subject to a probationary period of 6 months. (Emphasis Added.)

No exception to this rule is created in the rule or the statute. Therefore, it is our opinion that Per 302.03 requires all appointees to a classified position to serve a probationary period, whether or not they have time worked in an unclassified position.^{2/}

I trust that this has been responsive to your inquiry. If you would like to discuss this further, or if you have any questions, please contact me.

Very truly yours,



Daniel J. Mullen
Assistant Attorney General

DJM:mee

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^{1/} RSA 94:3-a provides that unclassified legislative employees may transfer up to 90 days of sick leave credit that they have accumulated in the unclassified service. However, it does not state how leave should be accrued.

^{2/} Indeed, an employee who moves from one classified position to another is required to serve the probationary period in the second position. We can find no reason to treat the issue differently simply because the first position was unclassified.